SUPREME COURT OF THE UNITED STATES.

No. 49.

JOHN WALKER, PLAINTIFF IN ERROR,

vs.

THE PRESIDENT AND DIRECTORS OF THE BANK OF WASHINGTON, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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UNITED STATES OF AMERICA, *sct.*

The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, in the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, between the president and directors of the Bank of Washington, plaintiffs, and John Walker, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, immediately; and that the record and proceedings aforesaid, being inspected, the said supreme court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of said supreme court.

Issued this 13th day of January, 1842.

W. BRENT,
Clerk C't. C't. D. C., city Washington.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the president and directors of the Bank of Washington, greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States immediately, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein John Walker is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge of the circuit court of the District of Columbia, this thirteenth day of January, 1842.

W. CRANCH.

Know all men by these presents, that we, John Walker, Henry Walker, and Joseph Peck, are held and firmly bound unto the president and directors of the Bank of Washington, in the full and just sum of two hundred dollars, current money of the United States, to be paid to the said president and directors, their certain attorney or assigns; to which payment, well and truly to be made and done, we

bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this thirteenth day of January, 1842.

Whereas, lately at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the president and directors of the Bank of Washington were plaintiffs and the said John Walker was defendant, judgment was rendered against the said defendant, and he having obtained a writ of error, and filed a copy thereof, in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said president and directors, citing and admonishing them to be and appear at a supreme court of the United States, to be holden at Washington, immediately.

Now, the condition of the above obligation is such, that if the said John Walker shall prosecute his suit to effect, and answer all damages and costs, if he fails to make his plea good, then the above obligation to be null and void; otherwise, to be in full force and virtue in law.

JNO. WALKER, [L. S.]
HENRY WALKER, [L. S.]
JOS. PECK, [L. S.]

Signed, sealed, and delivered, in the presence of
JAS. REILY.

This bond and sureties is approved.
W. CRANCH.

Copy.—Test: W. BRENT, *Clerk.*

Style of Court.

DISTRICT OF COLUMBIA, *ss:*

At a Circuit Court of the District of Columbia, begun and held in and for the county of Washington at the city of Washington, on the fourth Monday of November, being the twenty-second day of the same month, in the year of our Lord one thousand eight hundred and forty-one, and of the Independence of the United States the sixty-sixth. Present: William Cranch, chief judge; the honorable Buckner Thruston and James S. Morsell, assistant judges; Alexander Hunter, Esq., marshal; William Brent, clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

Parties.

THE PRESIDENT AND DIRECTORS OF THE BANK OF WASHINGTON
vs.
JOHN WALKER.

Be it remembered that heretofore, to wit: On the ninth day of July, in the year of our Lord one thousand eight hundred and forty

the said plaintiffs, by Johnson Hellen, Esq., their attorney, prosecuted and sued forth out of the circuit court here, the United States writ of capias ad respondendum, directed to the marshal of the District of Columbia in the words and of the tenor following, to wit:

Capias ad respond.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the Marshal of the District of Columbia, greeting:

We command you, that you take John Walker, late of Washington county, if he shall be found within the county of Washington in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of November next, to answer unto the president and directors of the Bank of Washington in a plea of trespass on the case, and so forth.

Hereof fail not at your peril, and have you then and there this writ:

Witness, W. Cranch, esquire, chief judge of our said court, at the city of Washington, the first day of May, anno domini one thousand eight hundred and forty.

Issued the 9th day of July, 1840.

W. BRENT, *Clerk.*

HELLEN.

And the aforesaid plaintiffs by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said defendant in the plea aforesaid, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington county, to wit:

John Walker, late of the county aforesaid, was attached to answer unto the president and directors of the Bank of Washington in a plea of trespass on the case, and so forth.

And whereas, the said plaintiffs by J. Hellen, their attorney, complain, that whereas heretofore, to wit: on the ninth day of May, in the year eighteen hundred and forty, at the county aforesaid, the said defendant made his certain promissory note in writing, dated the day and year aforesaid, and thereby thirty days after the date thereof, promised to pay to one Henry Walker, by the name of Henry Walker or order, the sum of ten thousand dollars for value received, negotiable and payable at the Bank of Washington; and the said Henry Walker, to whom, or to whose order, the payment of the said sum of money mentioned in the said note was to be made, and before the payment thereof, to wit: on the day and year aforesaid, at the county aforesaid, endorsed and delivered the said

note to one Lewis Walker, and the said Lewis Walker then and there endorsed and delivered the said note to the plaintiffs. And the said plaintiffs in fact say, that afterwards, and when the said note became due and payable according to the tenor and effect thereof, to wit: on the eleventh day of June, in the year eighteen hundred and forty, at the Bank of Washington aforesaid, to wit: in the county aforesaid, the said promissory note so as aforesaid endorsed, was duly presented and shown for payment thereof, to and at the said Bank of Washington, and payment of the said sum of money in the said note specified was then and there duly required, according to the tenor and effect thereof; but that neither the said Bank of Washington, nor the said defendant, nor any other person or persons on his behalf, did, or would at that time, or at any time before or afterwards, pay the said note or any part of the money therein specified, to the plaintiffs, but wholly neglected and refused so to do, of all which said premises the said defendant afterward, to wit: on the day and year aforesaid at the county aforesaid, had notice. By means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiffs, the sum of money specified in the said note, when he, the said defendant, should be thereto afterwards requested; and being so liable, he, the said defendant in consideration thereof, afterwards, to wit: on the day and year last aforesaid, at the county aforesaid, undertook, and faithfully promised the said plaintiffs to pay them the said sum of money in the said note mentioned, when he the said defendant should be thereunto afterwards requested. And whereas, the said defendant afterwards, to wit: on the said eleventh day of June last aforesaid, at the county aforesaid, was also indebted to the said plaintiffs in another sum of ten thousand dollars, current money, for so much money by the said defendant, before that time, had and received to the use of the said plaintiffs; and also in another sum of ten thousand dollars, current money, for so much money, by the said plaintiffs before that time lent and advanced to the said defendant, at his special instance and request; and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit: on the day and year last aforesaid, at the county aforesaid, promised the said plaintiffs to pay them the said several sums of money, when he should be thereto afterwards required so to do. Yet, the said defendant, the said several sums of money, or any part thereof, to pay to the said plaintiffs hath refused, and still doth refuse, notwithstanding his said several promises and undertakings; and although they have requested the said defendant to pay the same, to wit: on the day and year last aforesaid, and often afterwards, at the county aforesaid, to the damage of the said plaintiffs in the sum of fifteen thousand dollars, and therefore they bring suit, and so forth.

J. HELLEN, *for pltfs.*

November Term, 1840.—*Marshal's Return.*

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, and the day of the return of the aforegoing writ, come again into the circuit court here the said plaintiffs, by their attorney, aforesaid; and the marshal of the District aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit: "Cepi."

A. HUNTER, *Marshal.*

Defendant's Appearance.

And the said defendant being called, appears in court here, by Brent & Brent, esquires, his attorney; and thereupon, on motion of the said plaintiffs, by their attorney aforesaid, it is ruled by the court here, that the said defendant give special bail in the plea aforesaid, or in default thereof be committed to the custody of the marshal of the said District.

Special Bail.

Whereupon a certain Richard France, Joseph Peck, and Henry Walker, present here in court in there proper person, undertake for the said defendant, that in case the aforesaid plaintiffs shall recover judgment against the said defendant in the plea aforesaid, or that he shall be therein legally convict, that then the said defendant shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the District aforesaid in satisfaction thereof, or that they, the said Richard France, Joseph Peck, and Henry Walker, will do the same for him.

Rule Plea.

And thereupon, on motion of the said plaintiffs, by their attorney aforesaid, it is ruled by the court that the said defendant answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the court here will be entered against him in default thereof. And the said defendant, by his attorney aforesaid, defends the force and injury when, &c., and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid; and to him it is granted. The same day is given to the said plaintiffs also.

March Term, 1841—*Non Assumpsit—Issue Joined—Venire Facias.*

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-one, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, come again into the circuit court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his attorney aforesaid. And the said defendant, by his attorney aforesaid, as before, defends

the force and injury when, &c., and saith, that he did not assume upon himself, in manner and form as the aforesaid plaintiffs above against him have complained, and of this he puts himself upon the country. And the said plaintiffs, by their attorney aforesaid, in like manner, &c.; therefore let a jury thereon appear before the court here on the fourth Monday of November next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; and the same day is given to the said parties, then and there, &c.

To November Term, 1841.

And now at this day, to wit, the said fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, come again into the circuit court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his attorney aforesaid. Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons from the pannel of petit jurors, returned to the court here by the marshal of the District of Columbia, be drawn by ballot, according to the act of Assembly in such case made and provided; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists was delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury.

1. Edmund Brooke,
2. John L. Brightwell,
3. Ninian Beall,
4. James Galt,
5. John E. Neale,
6. Robert K. Nevitt,
7. Sam'l Drury,
8. James Clephane,
9. John B. Ferguson,
10. Thomas Owen,
11. James Lusby,
12. Simeon Matlock.

Verdict—Damages.

Who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendant did assume upon himself, in manner and form as the aforesaid plaintiffs within against him have complained, and they assess the damages of the said plaintiffs, sustained by occasion of the nonperformance of the promise and assumption aforesaid, to the sum of ten thousand dollars, current money, with interest from the eleventh day of June, eighteen hundred and forty, till paid.

Judgment on Verdict.

Therefore it is considered by the court here, that the aforesaid plaintiffs recover against the said defendant, as well the sum of ten thousand dollars, current money, their damages aforesaid, with interest from the eleventh day of June, eighteen hundred and forty, by the jurors aforesaid, in form aforesaid assessed, to be sustained

by occasion of the nonperformance of the promise and assumption aforesaid, as the sum of ——— dollars and ——— cents by the court here unto them, the said plaintiffs, on their assent adjudged for their costs and charges, by them about their suit in this behalf laid out and expended; and the said defendant in mercy, &c.

Memorandum.

Memorandum.—Before the jurors aforesaid retired from the bar of the court here, the said defendant, by his attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Defendant's First Bill of Exceptions.

The PRESIDENT and DIRECTORS of the Bank of Washington, *vs.* JOHN WALKER. } Defendant's 1st Bill of Exceptions.

At the trial of the above cause, the plaintiffs having given evidence tending to prove the handwriting of the defendant to the promissory note declared upon, read it in evidence, [copied in page 29] and then rested.

Whereupon the defendant then gave evidence, tending to shew that the note dated on the 9th of May, 1840, was given in renewal of a previous note dated on the 6th of February, 1840, similarly signed and endorsed, payable ninety days after date; which said note, of the 6th of February, 1840, was discounted by the plaintiffs, at the request of the defendant, for his accommodation, as a loan, on the 18th February, 1840, but not passed to his credit until the 22d February, 1840; at which time, last aforesaid, an officer of the plaintiffs deducted from the proceeds of said note the interest on the same, computed from the date of said note, (the 6th February, 1840,) for the period of 94 days, and that said note no where appeared on the books of the plaintiffs until the 18th February, 1840; that the whole amount credited by plaintiffs to the defendant, as the consideration of said note dated upon the 6th February, 1840, and discounted only upon the 18th February, 1840, and passed to defendant upon the 22d of same month, was the sum of $9,843 33; and that the sum of $156 67 was taken by said plaintiffs, as the interest upon said note, for the time the same was discounted. And further gave evidence, tending to show that the said note of the 6th of February, 1840, was surrendered to the defendant upon the execution of the said note of the 9th of May, 1840, (the said last mentioned note being but a renewal of the former,) and that the said plaintiffs credited the defendant, on account of the said note of the 9th of May, 1840, only the sum of $9,943 33, and took, as interest upon said last named note, the sum of $56 67, which was exacted from said defendant.

Whereupon the plaintiffs gave evidence, tending to prove that, on the 20th of January, 1840, the defendant had checked out of

plaintiffs bank $1,224 93; that, on the 6th of February, 1840, he had checked out of plaintiffs bank $2,500; and, on the 21st of February, 1840, he had checked out of said bank to the amount of upwards of $7,000; all of which last named sums of money were charged to defendant on the books of the plaintiffs, and no moneys or funds appeared to his credit at the time of drawing out said last mentioned sums of money; and that, on the 22d day of February, 1840, the plaintiffs credited said defendant with $9,843 33, as the proceeds of said note dated the 6th February, 1840; and the balance then appearing to be due to defendant on the books of the plaintiffs, after charging him with the several amounts so as aforesaid drawn out of bank by him previous to the 22d of February, 1840, was $997 86; which balance was shewn to the defendant, and assented to by him.

The defendant then gave evidence, tending to shew that the said note, dated 6th February, 1840, was brought, on or after the 11th February, 1840, (it being a discount day,) by the president of the plaintiffs, or a book-keeper of said plaintiffs, to the discount clerk, (the witness,) and given to him as a note *not done*, or not passed by the board of directors; and that said note remained in the hands of such discount clerk until the 18th February, 1840, when it was passed by the said board; and, on the 22d February, 1840, the sum of $9,843 33 was passed to defendant's credit as the nett proceeds of said note, and that interest, at the rate of six per centum per annum on $10,000, computed from the date of said note for 94 days, was reserved at the time of entering such credit, by direction of some officer of the plaintiffs; and that it was the usual practice of plaintiffs to take interest on discounts only from the time of making the discount; and that it does not appear that defendant was credited on plaintiffs' books with the interest computed from the 6th of February aforesaid.

The defendant then asked the cashier of the plaintiffs, who was sworn as a witness in said cause, whether the amounts drawn out of bank by the defendant previous to 22d February, 1840, as aforesaid, were not charged on the books of the plaintiffs as overdrafts, and were not allowed as the personal credit of the defendant.

Whereupon the said cashier answered, that he had no doubt but that the defendant was allowed to check upon said note of 6th Febsuary, 1840, before the same was entered to his credit on the books of the bank. And being further asked for the reasons of this opinion by the defendant's counsel, he stated that he had no recollection of said note's being in bank previous to the 18th February, 1840, or of its existence, or of any arrangement with reference to it previous to that date; and that the said amounts, so checked out previous to 22d February, 1840, would not have been paid on defendant's checks but for the knowledge, on the part of the said cashier, that he (defendant) had a large contract with the Navy Department for the supply of beef, and that for antecedent liabili-

ties the defendant had given to plaintiffs good collateral security; from which, however, no surplus resulted, after paying said liabilities; and that the said advances made to the defendant after the 6th February, 1840, and previous to the 22d February, 1840, were made on security given, or to be given; but he does not know of any security given during that time, except the defendant's letter of 30th January, 1840, (copied in page 29,) a bill of sale, by defendant to plaintiffs, of his barrelled beef, dated 20th February, 1840, and the two acceptances of the navy agent, dated 19th February, 1840, and 2d April, 1840, (copied in page 30, 31,) and the note dated 6th of February, 1840, of which the said cashier has no recollection until the 18th of February, 1840; and that he is satisfied that said advances were not made on the personal credit of defendant. And, from all the above circumstances, he has no doubt that said note of 6th February, 1840, was in bank from the time of its date, and that defendant was allowed to check on said note from the day of its date.

Whereupon the defendants moved the court to instruct the jury that the facts mentioned by said cashier are evidence in said cause, but the inferences or opinions of said cashier are not evidence; but the court refused to give such instruction as prayed, but instructed the jury that the inferences or opinions of said witness are not of themselves evidence of the facts so inferred, but that the facts stated by the witness, as the ground of his inference or opinion, are competent to be given in evidence to the jury, together with the inference or opinion of the said witness; from which facts the jury are to judge whether such inferences and opinion are justified by the facts thus stated. Whereupon the defendant excepts to the said refusal and to the instruction so given, and this, his bill of exceptions, is signed, sealed, and enrolled this 24th day of December, 1841.

W. CRANCH, [L. S.]
JAMES S. MORSELL, [L. S.]

Defendant's 2d Bill of Exceptions.

After the evidence contained in the aforegoing bill of exceptions had been given, the defendant prayed the court to instruct the jury that, "if the jury believe, from the evidence aforesaid, that the advances to defendant named in the evidence were not made upon the note of 6th February, 1840, and that the plaintiffs, upon discounting said note, received or reserved more than at the rate of six per centum per annum, then the jury may infer usury from the whole evidence aforesaid in said note of 6th February, 1840." And "if the jury believe, from the evidence aforesaid, that the note of the 9th of May, 1840, named in the evidence, was given in RENEWAL of a FORMER note of the defendant, dated on the 6th February, 1840, payable in *ninety* days after date, and which last note was discounted by the plaintiffs, as a loan to the defendant, on the

18th day of February, 1840, but was not passed to the credit of the defendant until the 22d February, 1840, and that the said plaintiffs *then* charged and received interest upon the same from the date of the said note, to wit: from the 6th day of February, 1840, it is the *taking* above six *per centum per annum* for the loan of the money made to the defendant upon said note, and is *usury;* and the defendant is entitled to a verdict in his favor upon said note, notwithstanding the jury may find, from the evidence, that the defendant had overdrawn his account, as stated in the evidence, unless they further find that the said interest, reserved as aforesaid, was credited to defendant's account as a credit to take effect from the 6th February, 1840." But the court refused to grant each of said prayers, though presented *seriatim.* Whereupon the defendant excepts to the said refusal; and this his bill of exceptions is signed, sealed, and ordered to be enrolled this 24th of December, 1841.

W. CRANCH, [L. S.]
JAMES S. MORSELL, [L. S.]

Defendant's 3*d Bill of Exceptions.*

In addition to the evidence contained in the aforegoing bill of exceptions, which is made part hereof, the defendant gave evidence tending to show that, in October, 1839, the plaintiffs suspended specie payments, and have not, since that time, paid their notes in specie or its equivalent until July, 1841; and further gave evidence tending to prove that the paying teller of the plaintiffs, according to his impression, would not have paid the checks of the defendant for the amounts credited to defendant as aforesaid, on the 22d and 28th February, 1840, if drawn for the entire amounts in District bank paper or in the plaintiff's paper, unless he had received special instructions to that effect from the president, or unless he, the paying teller, knew that the plaintiffs were at that time desirous of increasing the circulation of their own notes; that he considered he had a discretion on that subject, in absence of instructions, and has no recollection of having received any instructions in regard to the discounts to defendant, or any general instructions as to the mode of paying discounts at that time, though it is his impression that he would not have paid discounts to so large an amount in District bank paper or plaintiff's paper at that time; nor would they, at the date of said notes, have received on deposite paper of Virginia banks (they having also suspended at the same time) in large amounts, or to the amount of either of said notes, unless for the accommodation of a regular customer of the plaintiffs, and only in that case upon the understanding that he would receive back the said deposite in the same kind of funds; and that the plaintiffs would not, by their officers, have received payment of the notes in suit, in case their amounts had been tendered, at the time of maturity, in the paper of Virginia banks, (all of which were in a state of suspension of specie payments,) and that the market value of

Virginia bank notes, in the months of February, March, April, and May, 1840, in the city of Washington, (where the plaintiffs did business,) was from ½ to 1 per cent. less than the notes of the banks in said District, or the notes of banks in Baltimore, Maryland.

And the defendant farther gave evidence to show, that on the 30th January, 1840, he sent to the plaintiffs his written application for a loan, in these words (copied on page 29). That he afterwards executed the note of the 6th February, 1840, named in the first bill of exceptions, and the note of the 25th February, 1840, now in suit; and then was passed to his credit, on the 22nd February, 1840, on the books of the plaintiffs, the sum of $9,843 33, as the proceeds of the discount of said above named note of the 6th February, 1840; and on the 28th February, 1840, the farther sum of $5,939 was passed to his credit on the books of the plaintiffs, as the proceeds of the discount of the note dated the 25th February, 1840. That the defendant checked out of the plaintiffs' bank the said several amounts so credited to him, and he gave evidence to show that some of his checks for said amounts were specially made payable in Virginia notes, and were in that form paid by the plaintiffs. That a check for upwards of $900, drawn by the defendant on plaintiffs on the 29th February, 1840, for part of the proceeds of the note of 25th February, 1840, passed to his credit as aforesaid, was also made payable in Virginia money on its face, but the plaintiffs, through their officers, refused to pay even Virginia money on said check, but against the wishes and request of the bearer, one Sinclair, (to whom the said check was given for value by said defendant,) paid the said check in notes of suspended banks in Delaware, Pennsylvania, and Ohio, being notes more depreciated in value than Virginia paper in said District of Columbia; and that said Sinclair had to pay, on $260 of said money paid to him on said check, a discount of $10, to obtain the equivalent of Virginia notes, and the balance of said proceeds of said check the said Sinclair could not pass at all, and he required the defendant to take it from him, which he did. And further gave evidence tending to prove, that at the time of the dates of said note, and of the proceeds thereof being credited to defendant as aforesaid, it was the practice of the plaintiffs, through their officers, not to pay out the accommodations or discounts made by the plaintiffs, to such large amounts as either of said notes, in the local bank paper of said District, or in specie, but in paper more depreciated than that of the said banks in said District. And further gave evidence tending to show, that in February, March, April, and May, 1840, notes of the Virginia banks were not considered bankable money, and that the plaintiffs had a notice posted up in their bank, that they would not receive the paper of the Virginia banks on deposite or payment of debts; and that the defendant did receive the proceeds of the loans stated as aforesaid in Virginia paper, and some in Pennsylvania paper.

And the plaintiffs, in cross examining the said witness in said cause, further proved, that said Walker always drew out personally, and on his checks, either the Virginia money or the other money, as he desired or directed, and generally such as he asked for, and never at any time made any objection to the moneys he was paid in; and further, that he declared that Virginia money was as good to him as any funds in which he could be paid, and that he preferred it to any other. And further proved, that the state of the bank and its business, and the notes they usually paid out, at the date of said defendant's letter, and at the date of the notes and the times of their being discounted, were well known to the customers of the bank; and that the defendant was then, and had been before, a considerable customer; and that all the notes of Virginia banks, or of other banks, paid out to defendant or other dealers, were received by the bank, in the way of its business, at par; and notwithstanding the notice aforesaid, the bank took such notes in small payments, or when mixed with others in large payments, or on deposite by customers whose business was such as induced the officers to expect that they would take the same sort of notes in payment from the bank.

And the plaintiffs further proved, on the cross examination of said witness, the cashier of said bank, that, at the time of the dates and discounting the said notes, it was the custom of the bank to pay out, for the proceeds of its discounts, its own notes or the notes of other banks, as desired by the parties receiving such discounts; that when the parties required it, they paid out their own notes, and when no particular paper was required, they paid out such as had most accumulated and it was most convenient for the bank to pay out; and that said Walker, if he had insisted on it, would, at the times of payment to him of said proceeds of said notes, according to their then practice, have had paid to him the same in their own notes.

Whereupon the defendant prayed the court to instruct the jury, as follows, to wit:

Prayer No. 4.

That if the jury believe, from the evidence aforesaid, that at the time the plaintiffs advanced the amounts of the notes in question, after deducting the discounts on the same, it was well understood and arranged between the plaintiffs and defendant, that the said amount should be advanced and loaned by plaintiffs to defendant, on condition that defendant should draw such amounts from said bank in Virginia bank notes, or in notes of other State banks in a state of suspension of specie payments—all which notes were depreciated in the market, and commonly passed below the current value of the notes of the said bank, and notes of other suspended banks in this District, and all, without exception, as well the notes of the said bank as of other suspended banks of this District, were

considerably depreciated, and commonly passed below the current money of the United States; and that defendant did, in pursuance of the terms and conditions of said loan, in fact receive the amount of said loans from the plaintiffs in the bank notes of Virginia, and of other States, which, at the time the same were so received by defendant, were depreciated considerably below the current value of the bank notes of this District, and still more considerably depreciated below the standard and current value of the current money of the United States, without any allowance for the depreciation of the same; and that such depreciation was well known to plaintiffs at the time and times of such loans; and that defendant would not have been permitted, and in fact was not permitted, by the plaintiffs or the officers of said bank, to draw out the amounts of such loans from the said bank, either in the notes of said bank, or of other solvent though suspended banks of this District, or in the current money of the U. States; and that the plaintiffs were to have received, and expected to receive, in repayment of said advances and loans, current money of the United States, out of the said drafts on the navy agent, and would not have received, in repayment of said loans, the whole amount of either loan or note, the bank notes of Virginia or of other State banks in a state of suspension; and that such current money of the United States was then at a premium very considerably over and in exchange for the notes of any of the suspended State banks, and of any of the banks in this District: then the jury should conclude from said facts, that the said loans were usurious and the said notes void.

Prayer No. 5.

If the jury believe, from the evidence aforesaid, that there was an application by the defendant to the plaintiffs for a loan of a large sum of money, and that the defendant, being in want of *such* sum of money, the plaintiffs agreed with him to loan him the amounts of the notes in suit, provided he would take the said amounts (after deducting therefrom the rate of six per centum on the same, for the time the said notes had to run) in notes of Virginia banks in a state of suspension, or some other State banks in a state of suspension, at their nominal amount; which said suspended bank notes were then depreciated in value below the value of the District bank notes, and much more depreciated below the value of specie; and that defendant would previously execute his notes to the plaintiffs for the nominal amounts, so to be advanced to him, superadding thereto the interest on the amount mentioned in each of said notes for the time said note had to run; and that the defendant, in pursuance of said agreement, did afterwards receive the said notes of suspended banks in Virginia, and other suspended State banks. And that if the jury further find that the bank reserved, on the respective nominal amounts of money so loaned to the defendant, interest thereon at the rate of six per centum per annum, paying him the balance

of said loans, in the depreciated paper aforesaid, and that the plaintiffs, according to the agreement between them and defendant, expected and intended to receive the amount of the notes in suit, with interest thereon, in specie, or in funds of greater value than the money so paid, as the proceeds of said notes as aforesaid, then the said facts, if believed by the jury, constitute an usurious agreement, and all contracts founded thereon are null and void.

Prayer No. 6.

If from the evidence aforesaid the jury shall find an agreement between the plaintiffs and the defendant, by which the defendant borrowed from the said plaintiffs the amounts of money mentioned in said notes, deducting interest on said amounts at the rate of six per centum per year, and that the proceeds of said loans were paid to the defendant, by the plaintiffs, in depreciated bank notes, as a device, and with intent to evade the statute of usury, and that the said notes were founded on such agreement, and made in pursuance thereof, then the jury *out* to find the said agreement to be usurious.

Prayer No. 7.

If the jury believe, from the evidence aforesaid, that the notes in suit were given in consideration of a loan or loans of money made by plaintiffs to defendant, and that by the terms of the agreement on which said loan or loans were made, the defendant was compelled to take the same in depreciated paper, (well known to the plaintiffs to be depreciated,) whereby the defendant not only paid the legal interest on the nominal amount of said loans, but sustained a loss on the depreciated paper with which the plaintiffs paid him, then it is competent for the jury to infer usury from the whole circumstances in evidence.

Prayer No. 8.

It is competent for the jury, from all the circumstances in evidence, to infer usury in the agreement or agreements on which the notes in suit were founded.

But the court refused each of said prayers, though presented *seriatim*, and the defendant excepts to such refusal, and claims the same benefit of exception as if each refusal aforesaid was separately excepted to. And this his bill of exceptions is signed, sealed, and ordered to be enrolled, this 24th day of December, 1841.

W. CRANCH, [L. S.]
JAMES S. MORSELL, [L. S.]

Note referred to in defendants 1st exception, page 13:

[$10,000.] CITY OF WASHINGTON, *May* 9, 1840.

Thirty days after date I promise to pay to Henry Walker, or order, ten thousand dollars, for value received. Negotiable and payable at the Bank of Washington.

JNO. WALKER.

Credit the drawer.

On the back of the above was the following endorsement, to wit:

Henry Walker.
Lewis Walker.
Jno. Walker.

Letter from defendant to plaintiffs.

Letter from Jno. Walker to plaintiffs, dated 30th January, 1840, referred to in defendant's exceptions, page 17:

GENTLEMEN: I am desirous of obtaining a loan of twenty-five thousand dollars, to purchase cattle for fulfilling my contract with the Government, for N. York station, say 2,000 barrels, and amounting to nearly $27,000.

In security for the above money I'll assign all my right and title to the beef now on hand, say barrelled and salted, and all that I may have (reserving a prior right of $3,000, already given for Norfolk station) at the warehouse on Bradley's wharf, to be subject to your control.

I'll deposit an accepted draft of E. Kane, Esq., navy agent, for the payment of my contract for N. *S.* station.

Y'rs. resp'y.

JNO. WALKER.

January 30, 1840.

To the President & Directors of the Bank of Washington.

Accepted draft of 19th February, 1840, referred to in the above letter:

ELIAS KANE, Esq., navy agent, Washington, D. C.

SIR: Please pay to James Adams, Esq., cashier of the Bank of Washington, or order, the sum of ten thousand dollars, out of the delivery of navy beef, to be made by me at the navy yard, Brooklyn, New York, under my contract, dated 30th September, 1839.

And oblige, sir, very respectfully, &c.

Your ob't. serv't.

JNO. WALKER.

WASHINGTON, D. C., *February* 19, 1840.

On the face of the aforegoing draft was the following acceptance, to wit:

Accepted, to be paid by me, when the bills shall have been received and duly approved by the commandant of the navy yard.

ELIAS KANE.

Accepted draft of April 2d, 1840, referred to in defendant's exceptions, page 17:

ELIAS KANE, Esq., navy agent, Washington, D. C.

SIR: Please pay to James Adams, Esq., or order, the amount due me for delivery of navy beef, to be delivered by me, under my contract, at the navy yard, Brooklyn, New York.

And oblige, sir, very respectfully,

Your ob't. serv't.

JNO. WALKER.

April 2d, 1840.

On the face of the above was the following acceptance, to wit:

Accepted, to be paid by me, when the bills shall have been received and duly approved by the commandant of the navy yard, Brooklyn, New York.

ELIAS KANE, *Navy Agent.*

Bill of sale, dated 20th February, 1840, *referred to in defendant's exceptions, page* 17.

This indenture made this twentieth day of February, in the year one thousand eight hundred and forty, between John Walker, of Washington city, in the District of Columbia, of the one part, and James Adams, of the same place, of the other part: whereas the said John Walker hath contracted with the United States of America, to furnish the United States with a certain number of barrels of salted beef, in the manner, and upon the terms and conditions specified in the contract so made; and whereas the said John Walker stands largely indebted unto the president and directors of the Bank of Washington, on loans or discounts obtained from the said bank; and whereas the said John Walker is anxious to secure the payment of the money due as aforesaid, and all and every draft or drafts, note or notes, that have been drawn or given for the same, or that may, at any time or times hereafter, be drawn or given by way of renewal or substitution for such drafts or notes, or any of them, or any part or parts thereof, and is also anxious to secure the payment of any, or sums of, money that may, at any time or times hereafter, be advanced and loaned, by the said Bank of Washington, to him, the said John Walker; or any draft or drafts, note or notes, or on any account whatever, and all drafts or notes that may, at any time or times hereafter, be given by way of renewal or substitution, or in lieu of any draft or drafts, note or notes, that may be discounted for his use at the said bank; by the execution of these presents, the money which has been already advanced or loaned, or may hereafter be advanced or loaned, by the said bank, to the said John Walker, being for the purpose of enabling him to fulfil and perform his said contract with the United States of America. Now this indenture witnesseth, that the said John Walker, for and in consider-

ation of the premises, and the sum of five dollars, to him in hand paid by the said James Adams, at, or before, the sealing and delivery hereof, the receipt of which is hereby acknowledged, hath granted, bargained, sold, assigned, and transferred, and by these presents doth grant, bargain, sell, assign, and transfer, unto the said James Adams, his executors, administrators, and assigns, all the beef which he has already salted and put up, or had in preparation to be salted and put up, for delivery, in performance of the said contract, and now at the warehouse on Bradley's wharf; and also all other beef which he shall, at any time or times hereafter, put up and salt, or have in preparation to be put up and salted, in pursuance of the said contract with the United States, to be delivered at such stations as may be required by the said United States, (excepting, however, when the said bank shall have received payment of fifteen thousand dollars, part of the amount due to it as aforesaid, and for which sum it holds an acceptance of Elias Kane, Esq., navy agent, dated on the twentieth day of November, 1839, as collateral security, three thousand dollars worth of said beef for the Norfolk station, on which their is a lien to take effect after the payment aforesaid,) to have and to hold, all and singular, the beef hereby bargained and sold, or intended so to be, (except as before excepted,) unto the said James Adams, his executors, administrators, and assigns, upon trust, that in case, at any time or times hereafter, any number of the barrels of beef, which are already, or hereafter shall be, salted and put up, shall be delivered, by the said John Walker, at any public station for inspection by the agents of the United States, and shall be condemned by any of the said agents, and shall not be accepted and received, by such agent or agents, as a fulfilment of, or performance of, the said contract on the part of the said John Walker with the said United States, then the said James Adams, his executors, administrators, or assigns, shall sell and dispose of, all and singular, the barrels of beef that may at any time or times be condemned, and not accepted by any agent or agents of the United States, at any public station whatever, in fulfilment of the said contract, at public or private sale, upon such terms and conditions as he or they shall deem proper, and after such notice of the time and place of sale, as he or they may deem right, (and power and authority are hereby given to him and them, to appoint any person or persons to act as his or their agent or agents, in making any such sale or sales, and to such agent or agents to act in the execution of any matter necessary for the complete performance of the trusts, or any of them, declared herein,) and the moneys produced by the sale or sales, after first deducting all the expenses of any such sale or sales, and every other charge or expense arising out of this trust, and a commission of two per cent. on the amount of the sales, for services as trustee, he or they shall apply, to the payment of any draft or drafts, note or notes, then held by the said Bank of Washington, on account of the debt

due thereto, from the said John Walker, or any part thereof; and the balance, if any, shall be paid to the said John Walker, his executors, administrators, or assigns. And the said John Walker, for himself, his heirs, executors, and administrators, covenants and agrees, with the said James Adams, that he will insure the said beef, which now is, or hereafter shall be, salted and put up, against the danger of loss by fire in some chartered insurance company, in the sum of fifty thousand dollars, and will assign the policy to the said Bank of Washington; and, also, on the shipment of the said barrels of beef, or any of them, he will insure the same against the peril of loss or damage from the water or seas, and assign the policy or policies to the said Bank of Washington; and that he will be at all cost and expense touching the said beef, by insurance or otherwise.

In witness whereof, the said John Walker hath hereto, on the day and year first above written, set his hand and seal.

JNO. WALKER, [L. S.]

Signed, sealed, and delivered, in the presence of
B. K. MORSELL.

DISTRICT OF COLUMBIA,
Washington county, to wit:

Be it remembered, that on this twentieth day of February, in the year one thousand eight hundred and forty, personally appeared before me, the subscriber, a justice of the peace, in and for said county, John Walker, the party grantor named in the within deed, and acknowledged the same to be his act and deed.

Acknowledged before B. K. MORSELL, *J. P.*

And whereas, afterwards, on the thirteenth day of January, in the year eighteen hundred and forty-two, the said John Walker, by his attorney aforesaid, produced and filed in court here, the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the Circuit Court of the United States, in the District of Columbia, sitting for the county of Washington; and in pursuance thereof, and according to the form and effect of the law, in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereunto subscribed my name
[L. S.] and affixed the seal of said court, at the city of Washington, this 1st day of February, 1842.

W. BRENT, *Clerk.*